

DATE: September 21, 2017

TO: WCA Governing Board

FROM: Joseph Gonzalez, Project Manager

Through: Mark Stanley, Executive Officer

SUBJECT: Item 14: Consideration of a resolution to: 1) accept Conservation Easement within the Puente Hills totaling 11.56 acres within a portion of Assessor Identification Number 8291-003-901; and, 2) accept a monitoring fund endowment managed by The San Diego Foundation.

RECOMMENDATION: That the Watershed Conservation Authority (WCA): 1) accept conservation easement within the Puente Hills totaling 11.56 acres within a portion of Assessor Identification Number 8291-003-901; and 2) accept a monitoring fund endowment managed by The San Diego Foundation.

BACKGROUND: Since January 2016, the Watershed Conservation Authority Board has approved the acceptance of conservation easements (CE), as CE holder, within the Puente Hills totaling approximately 65 acres of land owned and/or operated by the Puente Hills Habitat Preservation Authority (Habitat Authority) as part of the Puente Hills Preserve, County of Los Angeles and related two monitoring endowments managed by The San Diego Foundation. This action would accept a new conservation easement and monitoring endowment over 11.56 acres of coastal sage scrub (CSS) in the Puente Hills Preserve as off-site restoration required as mitigation for impacts to CSS habitat associated with four proposed projects at the Olinda Alpha Landfill (landfill) in Brea, California. Exhibit A: Vicinity and CE Map

OC Waste & Recycling (OCWR) will be financing the 11.56 acres of off-site CSS habitat restoration and long-term management to be carried out by the Puente Hills Habitat Preservation Authority (Habitat Authority) in accordance with the HCP and to mitigate impacts to approximately 5.78 acres of CSS habitat considered occupied by the federally listed as threatened coastal California gnatcatcher (*Poliophtila californica californica*; CAGN) as well as 2.85 acres of ruderal/nonnative grassland that may support CAGN foraging and/or dispersal. The Conservation Easement and annual monitoring by the CE holder shall ensure the Property will be retained forever in a natural, restored, or enhanced condition consistent with the habitat protection requirements of the HCP and Permit and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Exhibit B: Conservation Easement Deed and Exhibit C: Sample Annual Conservation Easement Inspection Form.

The Habitat Restoration Plan, based on the Habitat Conservation Plan (HCP), prepared by LSA Associates Inc. in consultation with and per requirements of the United States Fish and Wildlife Service (USFWS), will be reviewed and approved by the USFWS prior to implementation. These plans have been approved by USFWS staff, and the project is pending the federal register review process for the Federal Endangered Species Act Incidental Take Permit. The property on which the site will be restored is owned by the City of Whittier and managed by the Habitat Authority.

Additionally, OC Waste & Recycling in a 2016 agreement with California Department of Fish and Wildlife (CDFW) will implement recommendations to compensate for impacts to a total of approximately 7.76 acres of unoccupied CSS habitat on site by financing 8.30 acres of off-site CSS habitat restoration with

management to also be carried out by the Habitat Authority. This area will not have a conservation easement, but will be adjacent to the 11.56-acre site mentioned previously and as such WCA shall not be required to monitor this additional land area. Exhibit D: CE Adjacency Graphic.

The conservation easement language has been agreed to by USFWS and the City of Whittier, and an agreement between the City and Habitat Authority has been executed to ensure that the City will execute the conservation easement over the 11.56 acres (Exhibit E: Agreement for Conservation Easement). The Habitat Authority will be executing a Mitigation Agreement with OCWR; OCWR is then targeting to take the entire package to the Orange County Board of Supervisors in January 2018 for final approval.

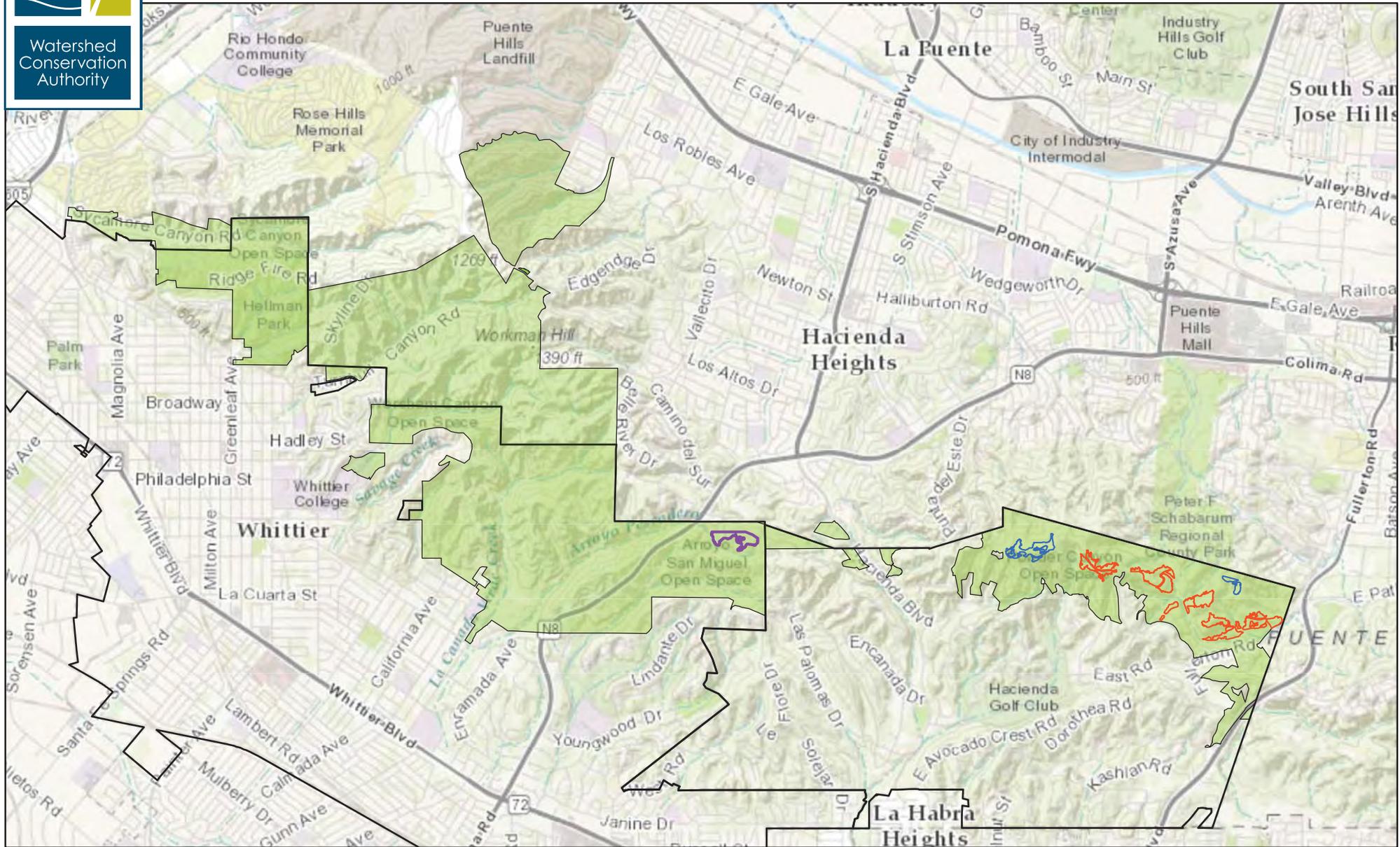
OCWR will establish a monitoring endowment fund for the CE holder by depositing \$41,500 with the San Diego Foundation held for the benefit of the CE holder. The San Diego Foundation will manage the fund, issue earnings reports and will make future annual distributions to the CE holder of record to fund the monitoring and reporting requirement associated with acceptance of the Conservation Easements. (Exhibit F - Endowment Agreement).

Staff recommends acceptance of the conservation easement and endowment for monitoring funds as a USFWS approved suitable third-party Conservation Easement Holder. The WCA will accept the conservation easement upon receipt of perfect recordable legal description reflective of the information provided herein.

FISCAL INFORMATION: Anticipated annual expense for monitoring and reporting is estimated in current dollars to be \$1,000 annually, this value will be adjusted for inflation. An Endowment will be funded by OCWR to be held and managed by the San Diego Foundation for the benefit of the Easement Holder of record. The fund will make distributions from the Conservation Easement Fund to the Easement Holder, to offset the costs/expenses incurred by the Easement Holder in performing its monitoring and inspection obligations under the Conservation Easement.

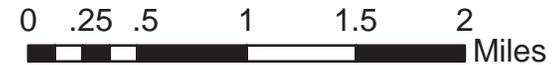


WCA Conservation Easements on PHHPA Owned/Managed Property



Puente Hills Preserve
 Municipal Boundary

SCE Mitigation Site (53 ac)
 Monterey Park Mitigation Site (15 ac)
 Olinda Mitigation Site (11.56 ac)



Map prepared May 24, 2017

Sources: Esri, HERE, DeLorme, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

**Watershed Conservation Authority
100 N. Old San Gabriel Canyon Road
Azusa, CA 91702**

Attention: Deborah Enos

Space Above for Recorder's Use Only

DOCUMENT ENTITLED TO FREE RECORDATION PURSUANT TO GOVT CODE SECTION 6103 and TRANSFER IS EXEMPT PURSUANT TO REV. & TAX CODE SECTION 11922.

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED (“Conservation Easement”) is made this _____ day of _____, 2017 (Effective date), by City of Whittier, a charter city (“Grantor” or “City”), in favor of Watershed Conservation Authority, a joint exercise of powers entity established pursuant to California Government Code § 6500, *et seq.*, satisfying the requirements of § 815, *et seq.*, of the California Civil Code (“Grantee” and also known as “WCA”)

RECITALS

- A. Grantor is the sole owner in fee simple of certain real property in the County of Los Angeles State of California, described in Exhibit A, attached hereto and incorporated herein by this reference (the “Property” which is also known herein as “CSS Mitigation Site No. 1”). The Property is managed by the Puente Hills Habitat Preservation Authority (“Habitat Authority”), pursuant to an agreement between the City and Habitat Authority dated August 14, 1997.
- B. The United States Fish and Wildlife Service (“USFWS”), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act, 16 U.S.C. § 1531, *et seq.* (“ESA”), the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. § 742(f), *et seq.*, and other provisions of Federal law.
- C. The Property possesses wildlife and habitat values of great importance to Grantor, Grantee, USFWS, the people of the State of California, and the people of the United States. The Property provides, or is capable of providing significant ecological and habitat values that benefit endangered, threatened, and other species, including the coastal California gnatcatcher, and contains coastal sage scrub (“CSS”) habitat (the

“Conservation Values”).

- D. The Olinda Alpha Landfill (“Landfill”) is a municipal solid waste landfill that is owned by the County of Orange (“County”) and operated by OC Waste & Recycling. The Landfill is located at 1942 N. Valencia Avenue, Brea.
- E. On April 17, 2007, the County of Orange Board of Supervisors certified Final Environmental Impact Report 588 (Final EIR 558), State Clearinghouse Number: 2004011055, for the continued operation and expansion of the Landfill and the Mitigation Plan created thereunder.
- F. The Property supports habitat required to be preserved and managed in perpetuity by Federal Endangered Species Act Incidental Take Permit TE-_____ (“Permit”) as mitigation for certain impacts of the Olinda Alpha Landfill Project (“Olinda Project”) according to the Low-Effect Habitat Conservation Plan (“HCP”), and Long Term Management Program (“Management Program,” attached as Exhibit B) prepared by the County for the Olinda Project, the terms of which are incorporated by reference in this Conservation Easement. The Permit authorizes anticipated “incidental take” of the federally threatened coastal California gnatcatcher. To satisfy the requirements in the HCP to mitigate impacts to coastal California gnatcatchers, the Permit requires the County to restore, conserve, and provide for perpetual management of 11.56 acres of CSS vegetation suitable for the coastal California gnatcatcher (“CSS Mitigation Site No. 1”). Grantor, Grantee, and USFWS each has a copy of the HCP and the Permit.
- G. The County contracted with the Habitat Authority to satisfy its obligations on portions of the Habitat Authority managed property to permanently conserve the restored CSS Mitigation Site No. 1 and to perform the long-term maintenance of CSS Mitigation Site No. 1 after sign-off by USFWS on the restoration of CSS Mitigation Site No. 1.
- H. This Conservation Easement is being executed and delivered in accordance with the Permit and the HCP whereby conservation requirements may be satisfied through establishment of a conservation easement on the Property. In addition, the County and Habitat Authority entered into a mitigation agreement entitled Mitigation Agreement By and Between Puente Hills Habitat Preservation Authority and County of Orange dated _____ (Mitigation Agreement) which requires the City to convey to WCA the Conservation Easement. This Conservation Easement identifies the USFWS as a third-party beneficiary of the Conservation Easement with a right of access to the Property and a right to enforce the terms of the Conservation Easement. This Conservation Easement incorporates by reference the attached Exhibit B, which includes the USFWS approved Management Program for CSS Mitigation Site No.1. Any future amendments to the Management Program must be approved by the USFWS.

- I. Grantor intends to convey to Grantee the right to preserve, protect, sustain, and enhance and/or restore the Conservation Values of the Property in perpetuity.
- J. Grantee is authorized to hold conservation easements pursuant to California Civil Code § 815, *et seq.*

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including Civil Code § 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property. The above stated recitals are incorporated herein.

1. Purposes. The purposes of this Conservation Easement are to ensure the Property will be retained forever in a natural, restored, or enhanced condition consistent with the habitat protection requirements of the HCP and Permit and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to activities that further or are consistent with the habitat conservation purposes of this Conservation Easement, including, without limitation, those involving the preservation and enhancement of native species and their habitats.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee:

(a) To preserve, protect, enhance, restore, and sustain the Conservation Values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Conservation Easement;

(c) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to take reasonable action, or any use or activity that is inconsistent with the purposes of this Conservation Easement;

(d) All of Grantor's mineral, air and water rights necessary to protect and to preserve, protect, and sustain the biological resources and Conservation Values of the Property, unless specifically excluded from this Easement, including Grantor's right, title and interest in and to any waters consisting of: (a) any riparian water rights appurtenant to the Property; (b) any appropriative water rights held by Grantor to the extent those rights are appurtenant to the Property; (c) any waters, the rights to which are secured under contract between the Grantor and any irrigation or water district, to the extent such waters are customarily applied to the Property; and

(d) any water from wells that are in existence or may be constructed in the future on the Property or on those lands described as excepted from the Property in the legal description and that were historically used by the Grantor to maintain the Property in a flooded condition (collectively “Easement Waters”). The Easement Waters are limited to the amount of Grantor’s waters reasonably required to maintain the Conservation Values of the Property.

(e) All of Grantor’s present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Property; such rights are hereby terminated and extinguished and may not be used on or transferred to any portion of the Property nor any other property.

(f) To enforce the terms and provisions of this Conservation Easement, prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement, including specifically, uses of air or water rights that are not consistent with preservation of the Conservation Values of the Property, and to restore or require the restoration of such areas or features of the Property that may be damaged by any prohibited use.

3. Third-Party Beneficiary. Grantor and Grantee acknowledge that USFWS is a third-party beneficiary of this Conservation Easement with the right of access to the Property and the right to enforce all obligations of Grantor and all other rights and remedies of Grantee under this Conservation Easement. These enforcement rights are in addition to, and do not limit, the rights of enforcement under the ESA and the Permit. Additionally, Grantor and Grantee acknowledge and agree that USFWS is expressly granted certain additional rights under this Conservation Easement including, but not limited to, prior written notice of certain specified actions and a right of approval of certain specified actions.

4. Prohibited Uses. Any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantor’s agents, and third parties, are expressly prohibited unless approved in advance in writing by the Grantee and USFWS as consistent with the preservation of the Conservation Values protected by this Conservation Easement:

(a) Unseasonal watering; use of fertilizers, pesticides, biocides, herbicides, rodenticides, fungicides or other agricultural chemicals; fire protection activities other than those described in the Management Program; and any and all other activities and uses which may adversely affect the Conservation Values of the Property or otherwise interfere with the purposes of this Conservation Easement;

(b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways;

(c) Grazing or other agricultural activity of any kind;

- (d) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, except as may be specifically permitted under this Conservation Easement;
- (e) Commercial, industrial, institutional, or residential structures or uses;
- (f) Any legal or de facto division, subdivision or partitioning of the Property, including a request for a certificate of compliance pursuant to the Subdivision Map Act (California Government Code § 66499.35);
- (g) Construction, reconstruction, expansion, location, relocation, installation, or placement of any building, billboard or sign, or any other structure or improvement of any kind;
- (h) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;
- (i) Planting, introduction or dispersal of non-native or exotic plant or animal species;
- (j) On the surface of the Property: Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sands, gravel, rocks or other material, or granting or authorizing surface entry for any such purpose;
- (k) Below the surface of the Property, but *only if* 1) such activities are inconsistent with the purposes of this Conservation Easement or 2) include surface entry, or the granting or authorizing of such entry: Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sands, gravel, rocks or other material below the surface of the Property;
- (l) Altering the surface or general topography of the Property, including building of new roads or trails, or paving or otherwise covering any portion of the Property;
- (m) Removing, disturbing, altering, destroying, or cutting of native trees, shrubs or other vegetation, except as permitted in Paragraph 6 or as required by law and in conformance with the Management Program for (1) fire breaks, (2) maintenance of existing foot trails or roads that are otherwise permitted under this Conservation Easement, (3) prevention or treatment of disease, or (4) public safety, including fire protective activities during an emergency;
- (n) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters;
- (o) Without the prior written consent of Grantee and USFWS, which Grantee and USFWS each may reasonably withhold, transferring, encumbering, selling, leasing, or otherwise separating the air, or water rights for the Property; changing the place or purpose of use

of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property, including but not limited to: (1) riparian water rights; (2) appropriative water rights; (3) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Property; and (4) any water from wells that are in existence or may be constructed in the future on the Property; and

(p) Any activity or use that violates or fails to comply with relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Property, or the activity or use in question.

5. Grantor's Duties. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities are reasonably expected to degrade or harm the Conservation Values of the Property or that are otherwise reasonably expected to be inconsistent with this Conservation Easement. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Conservation Easement, including but not limited to, Grantee's water rights, and to comply with the restrictions in Section 4 of this Conservation Easement.

6. Reserved Rights. Grantor reserves to itself, and to its successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are consistent with the purposes of, and not prohibited by, this Conservation Easement. Grantor and Habitat Authority, in its capacities as Grantor's property manager and as the party responsible for the habitat restoration and long-term management, expressly reserve the right to remove non-native and invasive species from the Property as described in the HCP and Habitat Restoration Plan and to implement the monitoring and management activities described in the Management Program. Grantor also specifically reserves the right to extract oil from the Property, but without surface right of entry relating thereto, so long as such extraction does not degrade or harm the Conservation Values of the Property. Further, the general right of access to the public for all trail and recreational uses not inconsistent with the Conservation Values of the Property, as existing or hereafter modified or approved by the Puente Hills Habitat Preservation Authority's Governing Board, are reserved.

7. Remedies for Violation and Corrective Action. If Grantee or USFWS determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee or USFWS shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). At the time of giving any such notice, Grantee shall also give a copy of the notice to USFWS (or, if USFWS gives a Notice of Violation it shall also give a copy of the notice to Grantee). Notice shall be provided in accordance with Section 15 of this Conservation Easement. In any instance, measures identified to cure the violation shall be reviewed and approved by USFWS. If a violation is not cured within thirty (30) days after receipt of the Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and there is a failure to begin the cure within the thirty (30)-day period or any failure(s) to continue diligently to complete the cure, Grantee or USFWS may bring an action at law or in equity in a

court of competent jurisdiction to enforce compliance with the terms of this Conservation Easement, to recover any damages to which Grantee may be entitled to recover for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefore, any damages recovered may apply to the cost of undertaking any corrective action on the Property.

If Grantee or USFWS, each in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Property, Grantee or USFWS may pursue the remedies available to it under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's and USFWS's rights under this Section apply equally to actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that Grantee's and USFWS's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee or USFWS shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Grantee or USFWS may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's and USFWS's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in California Civil Code § 815, *et seq.* The failure of Grantee or USFWS to discover a violation or to take immediate legal action shall not bar Grantee or USFWS from taking such action at a later time.

7.1 Standing. If at any time in the future Grantee, Grantor, or any successor in interest or subsequent transferee uses or threatens to use the Property for purposes inconsistent with the stated conservation purposes contained herein, or releases or threatens to abandon this Conservation Easement then, notwithstanding California Civil Code § 815.7, the California Attorney General, USFWS, any person, and any entity with a justiciable interest in the preservation of this Conservation Easement each has standing as an interested party in any proceeding affecting this Conservation Easement.

7.2 Costs of Enforcement. All reasonable costs incurred in enforcing the terms of this Conservation Easement including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by violation or negligence shall be borne by the violator.

7.3. Enforcement Discretion. Enforcement of the terms of this Conservation Easement by Grantee or USFWS shall be at the discretion of the enforcing party, and any forbearance by Grantee or USFWS to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by Grantee or USFWS of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's or USFWS's rights

under this Conservation Easement. No delay or omission by Grantee or USFWS in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

7.4. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee or USFWS to bring any action against Grantor for any injury to or change in the Property resulting from any cause beyond Grantor's reasonable control, including, without limitation, actions of third parties; fire not caused by Grantor, flood, storm, and earth movement; or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to persons or the Property resulting from such causes.

8. Access. This Conservation Easement does not convey a general right of access to the public, and likewise, does not affect public access rights to recreation areas managed by Grantee or on behalf of Grantor, as may currently exist or as may hereafter be designated and as provided for herein.

9. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including transfer costs, costs of title and documentation review, and maintenance of adequate liability insurance coverage, subject to the agreement between the City and Habitat Authority dated August 14, 1997. Grantor agrees that neither Grantee nor USFWS shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor and Grantee each remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, including those required from USFWS acting in its regulatory capacity, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, codes, ordinances, rules, regulations, orders and requirements.

9.1. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and USFWS with satisfactory evidence of payment upon request. Grantor and Grantee each shall keep the Property free from any liens, including those arising out of any obligations incurred for any labor or materials furnished or alleged to have been furnished to or for Grantor or Grantee at or for use on the Property.

9.2. Hold Harmless. Grantor shall hold harmless, protect, indemnify, and defend Grantee and its member agencies, directors, officers, employees, agents, contractors, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and, collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and,

collectively, “Claims”), arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence or willful misconduct of any of Grantee’s Indemnified Parties; (b) Grantor’s obligations specified in this Conservation Easement; (c) the obligations, covenants, representations, and warranties of this Conservation Easement relating to Costs and Liabilities of this Section 9; and (d) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any Grantee Indemnified Party by reason of any such Claim, Grantor shall, at the election of and upon written notice from the Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse the Grantee Indemnified Party for all charges incurred in defending the action or proceeding.

Grantor shall hold harmless, protect, and indemnify USFWS and its directors, officers, employees, agents, contractors and representatives, and the heirs, personal representatives, successors and assigns of each of them (each a “USFWS Indemnified Party” and, collectively, “USFWS’s Indemnified Parties”) from and against any and all Claims arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause; and (b) the existence or administration of this Conservation Easement. Provided, however, that this indemnification shall be inapplicable to a USFWS Indemnified Party with respect to any Claim due solely to the negligence or willful misconduct of that USFWS Indemnified Party. If any action or proceeding is brought against any of USFWS’s Indemnified Parties by reason of any Claim to which the indemnification in this Section 9 applies, then Grantor shall, at the election of and upon written notice from the USFWS Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the USFWS Indemnified Party or reimburse the USFWS Indemnified Party for all charges incurred for services of the U.S. Department of Justice in defending the action or proceeding.

9.3 No Hazardous Materials Liability. Except as disclosed in any Phase 1 report provided to Grantee prior to the recordation of this Conservation Easement, Grantor represents and warrants to Grantee and USFWS that it has no actual knowledge or notice of any release or threatened release of Hazardous Materials or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, about or from the Property, or transported to or from or affecting the Property. Without limiting the obligations of Grantor as otherwise provided in this instrument, Grantor releases and agrees to indemnify, protect and hold harmless Grantee’s Indemnified Parties and USFWS’s Indemnified Parties from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from, or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed, or released by any Grantee Indemnified Party or USFWS Indemnified Party, or their employees or agents. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property, and the violation or alleged violation of, or other failure to comply with, any Environmental Laws in relation to the Property. If any action or proceeding is brought against any Grantee Indemnified Party by reason of any such Claim, Grantor

shall, at the election of and upon written notice from the Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse the Grantee Indemnified Party for all charges incurred in defending the action or proceeding. If any action or proceeding is brought against any USFWS Indemnified Party by reason of any such Claim, Grantor shall, at the election of and upon written notice from the USFWS Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the USFWS Indemnified Party or reimburse the USFWS Indemnified Party for all charges incurred for services of the U.S. Department of Justice in defending the action or proceeding.

The term “Hazardous Materials” includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*) (CERCLA); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*) (RCRA); the Hazardous Materials Transportation Act (49 U.S.C. § 6901, *et seq.*) (HTA); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*) (HCL); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*) (HSA), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

The term “Environmental Laws” includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and USFWS that activities upon and use of the Property by Grantor its agents, employees, invitees, and contractors will comply with all Environmental Laws. Grantee represents, warrants and covenants to Grantor and USFWS that activities upon and use of the Property by Grantee, its agents, employees, invitees and contractors will comply with all Environmental Laws.

9.4 No Liability as Owner or Operator. Despite any contrary provision of this Conservation Easement, the Grantor, Grantee, and USFWS do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Grantee or USFWS any of the following:

(i) The obligations or liability of an “owner” or “operator,” as those terms are defined and used in Environmental Laws (defined above), including, without limitation, CERCLA; or

(ii) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(iii) The obligations of a responsible person under any applicable Environmental Laws; or

(iv) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(v) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

10. Condemnation. This Conservation Easement is a "conservation easement" as defined in California Code of Civil Procedure § 1240.055(a)(1) and constitutes "property appropriated to public use" as defined in California Code of Civil Procedure § 1240.055(a)(3). USFWS is a public entity that imposed conditions upon issuance of the Permit that were satisfied, in whole or in part, by the creation of this Conservation Easement, as described in California Code of Civil Procedure § 1240.055(a)(3). A person authorized to acquire property for public use by eminent domain shall seek to acquire the Property, if at all, *only* as provided in California Code of Civil Procedure § 1240.055. The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure § 1240.680, notwithstanding California Code of Civil Procedure §§ 1240.690 and 1240.700. If any person seeks to acquire the Property for public use, Grantee shall immediately provide written notice to USFWS and comply with all obligations of the holder of a conservation easement under California Code of Civil Procedure § 1240.055. Grantee shall use any proceeds received from condemnation of the Property in a manner determined by USFWS in writing to be consistent with the purposes of this Conservation Easement and Grantor's mitigation obligations under the Permit.

11. Conservation Easement Assignment or Transfer. This Conservation Easement may be assigned or transferred by Grantee or any successor in interest upon prior written approval of USFWS, which approval shall not be unreasonably withheld. Grantee shall give Grantor and USFWS at least thirty (30) days prior written notice of any proposed transfer. Approval of any assignment or transfer may be withheld whenever it will result in a merger of the Conservation Easement and the Property in a single Property owner (thereby extinguishing the Conservation Easement) if no legal mechanism is deemed adequate to preserve and protect the purposes of this Conservation Easement and the Conservation Values of the Property. Grantee or any successor in interest may assign or transfer its rights and obligations under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to California Civil Code § 815.3, or successor provision thereto, and as approved by USFWS. As a condition of such assignment or transfer, Grantee shall require that the conservation purposes of this Conservation Easement are carried out and notice of such restrictions shall be referenced in the deed recorded by the assignee or transferee in the Official Records of the County of Los Angeles. The failure of Grantee to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or its enforcement in any way.

12. Subsequent Property Transfer. Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference, applicable provisions of the Permit and any amendments thereto, to the extent those have been provided to or made known to Grantor. Grantor further agrees to give to Grantee and USFWS written notice of the intent to transfer any interest at least thirty (30) days prior to the date of such transfer. Grantee and USFWS shall have the right to prevent any transfer until prospective subsequent claimants or transferees are given notice of the covenants, terms, conditions and restrictions of this Conservation Easement, including the documents incorporated by reference in it, or whenever a subsequent Property transfer will result in the merger of the Conservation Easement and the Property in a single Property owner (thereby extinguishing the Conservation Easement) if no legal mechanism deemed adequate to preserve and protect the purposes of this Conservation Easement and the Conservation Values of the Property in perpetuity has been established. The failure of Grantor to perform any act provided in this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

13. No Merger. The doctrine of merger is not intended to apply and shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee and USFWS otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall promptly be recorded against the Property by Grantee, or its successor in interest, in favor of a third party approved in writing by USFWS to ensure that the mitigation obligations required under the Permit identified in Recital F, which include conservation of the Property in perpetuity through execution and recordation of a conservation easement or equivalent legal mechanism, and the purposes of California Civil Code § 815, are fulfilled. Until such replacement conservation easement or equivalent legal mechanism is executed and recorded, Grantee or its successor in interest shall continue to protect the Property in accordance with the terms of the original Conservation Easement. Any and all terms and conditions of this Conservation Easement shall be deemed covenants and restrictions upon the Property, which shall run with the land according to California law and otherwise exist in perpetuity.

14. Estoppel Certificates. Grantee shall, within thirty (30) business days after receiving Grantor's request therefore, execute and deliver to Grantor a document certifying, to the best knowledge of the person executing the document, that Grantor is in compliance with any obligation of Grantor contained in this Conservation Easement, otherwise evidencing the status of such obligation to the extent of Grantee's knowledge thereof, as may be reasonably requested by Grantor.

15. Notices. Any notice, demand, request, consent, approval, or communication that Grantor, Grantee, or USFWS desires or is required to give to the other shall be in writing and be either served personally or sent by first class mail, postage fully prepaid, or by a recognized overnight courier that guarantees next-day delivery addressed as follows:

To Grantor: City of Whittier
13230 Penn Street
Whittier, CA 90602
Attention: City Manager

To Grantee: Watershed Conservation Authority
100 N. Old San Gabriel Canyon Road
Azusa, CA 91702
Attention: Executive Officer

To USFWS: United States Fish and Wildlife Service
Carlsbad Field Office
2177 Salk Avenue, Suite 250
Carlsbad, CA 92008
Attn: Field Supervisor

or to such other address as any party shall designate by written notice to the others. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

16. Recordation. Grantor shall deliver an original, signed and notarized Conservation Easement to Grantee, and Grantee shall promptly record this instrument in the official records of the County in which the Property is located, and shall thereafter promptly provide a conformed copy of the recorded Conservation Easement to the Grantor and USFWS. Grantee may re-record at any time as may be required to preserve its right in this Conservation Easement.

17. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement and with prior written approval of USFWS. Any such amendment shall be consistent with the purposes of this Conservation Easement, the Permit requirements, and California law governing conservation easements and shall not affect its perpetual duration. Grantee shall promptly record this amended instrument in the official records of the County in which the Property is located, and shall thereafter promptly provide a conformed copy of the recorded amended Conservation Easement to the Grantor and USFWS.

18. Funding. Funding for the perpetual management, maintenance, and monitoring of this Conservation Easement has been deposited by the County, as specified in the Mitigation Agreement. Funding shall be held in trust or by other means specified in the Mitigation Agreement for the perpetual management, maintenance, and monitoring of this Conservation Easement and the Property in accordance with the Permit and the Long Term Management Program (Exhibit B).

19. Warranty. Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Property; that there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, water and mineral interests, except as is already expressly reserved herein) which have not been expressly subordinated to this

Conservation Easement by a written, recorded Subordination Agreement approved by Grantee and USFWS; and that, the Property is not subject to any other easement or interest that is adverse to or is not subordinate to this Conservation Easement.

20. Additional Interests. Grantor shall not grant any additional easements, rights of way or any additional interests in the Property, nor shall Grantor grant, transfer, abandon or relinquish (each a “Transfer”) any mineral, air, water, or water right associated with the Property, including without limitation any Easement Waters, without the prior written consent of Grantee and USFWS, excluding those rights already expressly reserved herein. Such consent may be withheld if Grantee and USFWS determine that the proposed interest or transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the conservation values of the Property. This Section shall not prohibit transfer of a fee or leasehold interest in the Property that complies with Section 12 and is subject to the terms of this Conservation Easement. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to Grantee and USFWS.

21. Termination of Conservation Easement. This conservation easement has been delivered and recorded prior to final sign-off by USFWS on the restoration of the mitigation sites. In the event USFWS determines that the restoration site has failed and will not fulfill the mitigation requirements in the HCP and Permit, this conservation easement shall terminate by its own terms and be of no further force and effect. Grantee agrees that upon written request made by Grantor and USFWS, Grantee will execute and deliver to Grantor a quitclaim of this conservation easement.

22. General Provisions.

22.1 Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and applicable Federal law including the ESA.

22.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the deed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code § 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

22.3 Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

22.4 Entire Agreement. This instrument and the Mitigation Agreement, including all exhibits thereto, together set forth the entire agreement of the parties and supersedes

all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with the provisions herein.

22.5 No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

22.6 Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement are imposed upon the Property and shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute an irrevocable servitude running in perpetuity with the Property.

22.7 Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts or omissions or breaches occurring prior to transfer shall survive transfer.

22.8 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

22.9 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(Signatures follow on next page)

IN WITNESS WHEREOF Grantor and Grantee have executed this Conservation Easement as of the Effective Date. The Effective Date is the date of the last signature below.

GRANTOR:

City of Whittier

BY: _____

TITLE: Mayor

DATE: _____

GRANTEE:

Watershed Conservation Authority

BY: _____
Mark Stanley

TITLE: Executive Officer

DATE: _____

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B
LONG TERM MANAGEMENT PROGRAM

Annual Review of the Conservation Easement Areas on Puente Hills Habitat Preservation
Authority managed land in Arroyo San Miguel, Whittier, CA
(Olinda Mitigation)

Watershed Conservation Authority

PROHIBITED ACTIVITIES

		(Circle One)		
		NOT OBSERVED	OBSERVED	N/A
1.	Unseasonal Watering		OBSERVED	N/A
<hr/>				

(If observed, describe corrective action or response taken)

2.	Use of herbicides, pesticides, biocides, fertilizers, or other agricultural chemicals, except to control non-native and invasive plant species.	NOT OBSERVED	OBSERVED	N/A
<hr/>				

(If observed, describe corrective action or response taken)

3.	Off-Road Vehicle use or use of motorized vehicles off existing roadways.	NOT OBSERVED	OBSERVED	N/A
<hr/>				

(If observed, describe corrective action or response taken)

5.	Livestock grazing or agriculture.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

6.	Horseback riding, bicycling, hunting or fishing or other recreational activities.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

7.	Commercial or industrial uses.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

8.	Any physical evidence of legal or de facto division, subdivision or partitioning of the property	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

9.	Construction or placement of any building, billboard, or any other structure or improvement of any kind.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

10.	Depositing or accumulation of trash, soil, ashes, refuse, waste, bio-solids	NOT OBSERVED	OBSERVED	N/A
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or any other materials.

(If observed, describe corrective action or response taken)

11.	Planting, introduction or dispersal of non-native or exotic plant or animal species.	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

12.	Surface excavation or extraction of minerals/soil.	NOT OBSERVED	OBSERVED	N/A
-----	--	-----------------	----------	-----

(If observed, describe corrective action or response taken)

13.	Recent alterations of topography/grading, including building of roads.	NOT OBSERVED	OBSERVED	N/A
-----	--	-----------------	----------	-----

(If observed, describe corrective action or response taken)

14.	Recently removed, cut, or destroyed trees, shrubs, or other vegetation, not including invasive and non-native species.	NOT OBSERVED	OBSERVED	N/A
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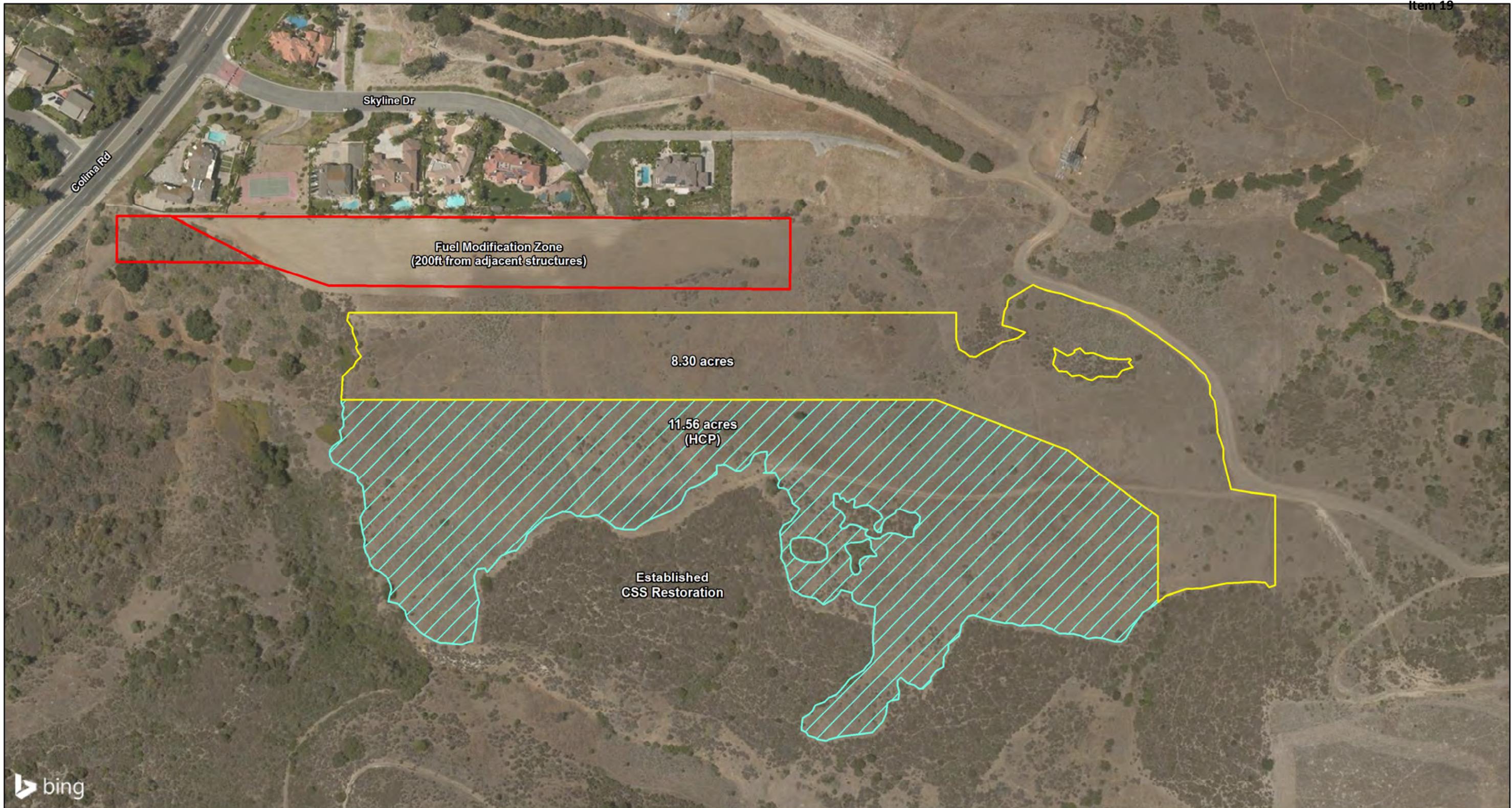
(If observed, describe corrective action or response taken)

15.	Manipulating, impounding, or altering of any water, body of water, or water course or any other activities detrimental to water quality.	NOT OBSERVED	OBSERVED	N/A
-----	--	--------------	----------	-----

(If observed, describe corrective action or response taken)

Additional

Notes: _____



LSA

LEGEND

- Fuel Modification Zone
- Proposed Restoration Area (19.86 acres Total)
- 8.30-acre Restoration Site
- 11.56-acre Restoration Site



0 90 180
FEET

SOURCE: Bing Maps (2014); Puente Hills Habitat Authority (2/2017)

I:\GEO1401D\GIS\HRP_OffsiteMitigation_OlindaLandfill.mxd (3/1/2017)

FIGURE 1

Agreement for Conservation Easement

This Agreement is entered into by and between the City of Whittier, a charter city (the "City"), and the Puente Hills Habitat Preservation Authority, a joint exercise of powers authority ("Habitat Authority"), for the deliverance, acceptance and recording of a conservation easement deed as to the property specified herein.

Recitals

WHEREAS, the City is the owner of real property that is currently managed by the Puente Hills Habitat Preservation Authority ("Habitat Authority"), approximately 11.56 acres of which is depicted in the attached Exhibit 1, (the "Property");

WHEREAS, the County of Orange (the "County") owns and operates a solid waste landfill known as the Olinda Alpha Landfill, and has applied for a permit to continue operation and expansion of the landfill. The permit requires environmental mitigation pursuant to Final Environmental Impact Report 588;

WHEREAS, the above EIR specifically requires restoration of coastal California gnatcatcher habitat, and the County intends to contract (the "Mitigation Agreement") with the Habitat Authority to perform the mitigation, manage the Property and provide for the continued permanent conservation of the restored Property by causing a conservation easement to be recorded on the Property;

WHEREAS, the City owns undeveloped land, which includes the Property;

WHEREAS, the City and the Habitat Authority desire restoration of the Property to native habitat;

WHEREAS, final approval of the permit and Mitigation Agreement by the United States Fish and Wildlife Service ("USFWS"), an agency of the United States Department of the Interior, and a survey of the exact parameters for the legal description need to be drafted prior to the City's execution of a conservation easement and delivery to a public agency authorized to accept a conservation easement pursuant to California Civil Code Section 815, et seq., but the parties desire to commit to their agreement for the delivery, acceptance and recording of such conservation easement, for the purpose of restoring and preserving habitat on the Property. One possible public agency is the Watershed Conservation Authority (WCA), a joint exercise of powers agency.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. The City agrees to grant, deliver and record a conservation easement to WCA or another public agency authorized to accept a conservation easement pursuant to Civil Code Section 815, et. seq. It is the Habitat Authority's obligation to find a grantee of the conservation easement acceptable to City.

- a. The City's granting of the conservation easement deed will occur within two years from the execution of this Agreement, once the Habitat Authority has established the final boundary of the easement area and has created the legal description for the conservation easement, after USFWS approval of the mitigation project.
- b. The conservation easement deed shall be in the form and content attached hereto as Exhibit 2.
- c. The USFWS will be a third-party beneficiary to the conservation easement grant.
- d. The maintenance in perpetuity of the Property after restoration shall be funded by the County of Orange by its depositing funds into a non-wasting endowment. Once the Mitigation Agreement is entered into by and between the Habitat Authority and the County, the Habitat Authority will use funds delivered to the Habitat Authority to complete the mitigation work and the Habitat Authority will be responsible for long-term maintenance of the restored the Property.

2. The parties may execute this Agreement in counterparts, which shall each be deemed an original.

3. Each party declares that he/she/it has read this Agreement and understands and knows the contents thereof, and represents and warrants that each of the parties executing this Agreement is empowered to do so and hereby binds the respective party, and all of its successors, assigns, principles, agents, employees, consultants, representatives, attorneys, bonding companies and insurers to the terms hereunder.

WHEREFORE, the undersigned having read the foregoing, and fully understanding it, and agreeing to its terms, hereby execute this Agreement and make it effective on the date of the last signature hereto.

[signatures on following page]

Dated: 8/8/17

PUENTE HILLS HABITAT
PRESERVATION AUTHORITY

By: Andrea Gullo
Andrea Gullo
Executive Director

Dated:

CITY OF WHITTIER

By: Jeffrey W. Collier
Jeffrey W. Collier
City Manager

Dated:

APPROVED AS TO FORM:

By: Richard D. Jones
Richard D. Jones
City Attorney

Dated: 8-11-17

ATTEST:

By: Kathryn A. Marshall
Kathryn A. Marshall
City Clerk



**FUND AGREEMENT
for the**

Olinda Restoration Conservation Easement Fund
(a Designated Mitigation Endowment fund)

THIS AGREEMENT (“Agreement”) is made and entered into on May 17, 2017, by and between THE SAN DIEGO FOUNDATION (“TSDF”) and the County of Orange, a political subdivision of the State of California, by and through its OC Waste and Recycling department (“Founder” or “Project Proponent”). San Diego Foundation and County are sometimes individually referred to as a “Party” and collectively referred to as the “Parties”. The Effective Date of this Agreement is as of the date last signed below.

RECITALS

- A. Project Proponent received a certain permit issued pursuant to section 10(a)(1)(B) of the Endangered Species Act by U.S. Fish and Wildlife Service (“Agency”) dated May 17, 2017 (the “Agency Agreement”) regarding the appropriate management and maintenance of certain open space land and open space easements which total 11.56 acres called OC Waste & Recycling Coastal Sage Scrub (CSS) Mitigation Site No. 1 (hereinafter referred to as the “Property”). Pursuant to the Agency Agreement, Project Proponent is responsible for the long-term stewardship costs of the Property in accordance with the requirements of that certain Habitat Conservation Plan Low-Effect Habitat Conservation Plan dated _____ (the “HCP”).
- B. Pursuant to the Agency Agreement, the Project Proponent is obligated to create an endowment fund in the amount of \$41,500 (the “Conservation Easement Endowment Amount”) representing a principal amount that, when managed and invested, is reasonably anticipated to cover the funding needs for perpetual performance of monitoring and inspection of the Property pursuant to the requirements of the Conservation Easement. This endowment has been established to be held, managed, invested and disbursed by TSDF solely for, and permanently restricted to, the Conservation Easement Monitoring Requirements for of the Property.

- C. Pursuant to the Agency Agreement, Watershed Conservation Authority (the “Conservation Easement Holder”) is obligated to monitor and inspect the Property in accordance with the Conservation Easement. The Easement Holder is a California public joint powers entity, and it is an organization described in Section 170(c)(1) or (2) of the Internal Revenue Code.
- D. To facilitate the matters described in Recital B, Founder is entering into this Agreement.

DEFINITIONS

The following terms, as used in this Agreement, shall be defined as follows:

(1) Agency: The lead governmental entity issuing a permit for the mitigation project and requiring the establishment of the mitigation endowment.

(2) Project Proponent: The entity proposing the mitigation project to Agency for approval and issuance of permit. In this Agreement, the Project Proponent is the Founder and such terms may be used interchangeably.

(3) Habitat Manager: Nonprofit or governmental entity contracted to perform habitat management tasks.

(4) Conservation Easement Holder: Nonprofit or governmental entity contracted to perform long-term monitoring.

(5) Conservation Easement: That instrument executed and recorded (ii) recognizing Agency as a third-party beneficiary, (iii) establishing the boundaries of the Mitigation Sites and (iv) providing for the permanent protection of the resource values located on the Mitigation Sites through the prohibition and prevention of any use or activity on the Mitigation Sites that could impair or interfere with the identified resource values.

(6) Conservation Easement Monitoring Requirements: The inspection and monitoring activities more particularly described in the Conservation Easement, which activities are to be accomplished on a regular basis by the Easement Holder.

(7) Property: The portions of real property to be conserved and managed by the Habitat Manager pursuant to the Agency Agreement and the Conservation Easement (*i.e.*, the Mitigation Sites).

(8) Habitat Conservation Plan (HCP): The plan describing the management activities to be performed on the Property.

(9) Agency Agreement: The agreement between Agency, Project Proponent and Habitat Manager concerning restoration, conservation and long-term management and monitoring of the Mitigation Sites which include the HCP.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. INCORPORATION OF RECITALS AND DEFINITIONS

The foregoing RECITALS and DEFINITIONS are hereby incorporated into this Agreement.

2. NAME OF FUND

Project Proponent transfers assets irrevocably to TSDf to establish in TSDf the Olinda Restoration Conservation Easement Fund (the "Fund") as an endowment for the purpose described in Section 3 below. An endowment is a permanent fund. Endowment funds are pooled for maximum benefit and invested to achieve long-term capital growth. Contributions are irrevocable and become assets of The San Diego Foundation. As an endowment fund for the purpose described in Section 3 below, the Fund shall be operated and administered in accordance with (i) Sections 65965, 65966, 65967 and 65968 of the California Government Code and (ii) the Uniform Prudent Management of Institutional Funds Act, California Probate Code Section 18501 et seq. ("UPMIFA"), except to the extent TSDf may adhere, from time to time, to more rigorous standards or requirements than those proscribed by UPMIFA. Expenditures from the Fund shall be made in the manner described for endowment funds under UPMIFA Section 18504. TSDf may receive additional irrevocable gifts of property acceptable to TSDf from time to time from Project Proponent and from any other source to be added to the Fund, all subject to the provisions hereof.

3. PURPOSE

Subject to the limitations of Section 5 below, the primary purpose of the Fund shall be to support the Conservation Easement Holder in furtherance of the long-term stewardship of the Property in accordance with the Agency Agreement. In the event that in the future the Conservation Easement Holder (i) no longer constitutes an organization described in Sections 170(c)(1) or (2) of the Internal Revenue Code, (ii) becomes subject to bankruptcy proceedings under state or federal law, (iii) liquidates and dissolves or otherwise ceases to exist, (iv) fails to submit to Agency and TSDf in a timely manner (or within such reasonable

period as determined by Agency and TSDF) the annual income and expense report (the “Expense Report”) along with reimbursement to the Fund of any unused funds from any previous distribution(s) and an annual certification, signed by the President or Chief Financial Officer of the Conservation Easement Holder, certifying as to the accuracy and completeness, in all material respects, of the Expense Report and the Conservation Easement Holder’s compliance with the requirements imposed upon it under the Agency Agreement (the “Annual Certification”), or (v) proves unable to fulfill substantially all of the duties described in the Agency Agreement as determined by either the Agency or a court of law, then the assets of the Fund shall be applied as described in Section 6 below.

4. INVESTMENT OF FUNDS

TSDF shall have all powers necessary or desirable to carry out the purposes of the Fund, including, but not limited to, the power to retain, invest and reinvest the Fund in any manner within the “prudent person” standard and the power to commingle the assets of the Fund with those of other funds for investment purposes, subject however, to the requirements of Sections 5231 and 5240 of the California Corporations Code.

5. DISTRIBUTEES

Subject to Section 6 below, earnings allocated by TSDF to the Fund shall be distributed exclusively for charitable, scientific, literary or educational purposes or to organizations of the type to which an individual taxpayer may make deductible charitable contributions, gifts, and bequests under the income, gift and estate tax provisions of the Internal Revenue Code of 1986, as amended, and of the Revenue and Taxation Code of California. It is intended by the foregoing that at the time a distribution is made from the Fund, the distribution must be made for a charitable, scientific, literary or educational purpose as described in, or to an organization which is described in, Sections 170(c)(1) or (2), of the Internal Revenue Code of 1986, as amended, and Section 17201 of the Revenue and Taxation Code of California, or to a government entity acceptable to Agency. Distributions from the Fund shall be within the purposes and procedures of TSDF as contained in its Articles of Incorporation and its Bylaws.

6. DISTRIBUTION

Distributions from the Fund may be made from earnings and so much of the net gains (realized and unrealized) in the fair value of the assets of the Fund as is prudent under the standard established by Section 18504 of UPMIFA. Distributions shall be made to the Conservation Easement Holder or such other

permissible distributees and at such times and in such amounts as may be designated by the Agency Agreement, subject to the approval of the TSDF Board of Governors. Subject to the limitations of Section 18504 of UPMIFA, distributions shall be made each year to the extent needed to cover the management and maintenance expenses for such year in accordance with the requirements of the HCP; provided, however, TSDF is not, and shall not in the future under any circumstances be deemed to be, a party to either the HCP or the Agency Agreement. TSDF shall have no liability or responsibility whatsoever for the funding needed to cover such expenses to the extent such funding need is greater than the distributable amount of the Fund. There shall be no requirement that all earnings and net gains be distributed each year; earnings and net gains may be accumulated and added to principal, and shall not later be available for distribution.

Distributions shall be made to such distributees of the type described in Section 5 above as may be designated by the Board of Governors of TSDF except as modified in accordance with Section 7 below.

In the event the Agency or Project Proponent notify TSDF in writing that the Conservation Easement Holder has misused or diverted any monies from the purposes required by the Agency Agreement or any of the events listed in Section 3 above have occurred, TSDF shall (i) within fourteen days cease making any further distributions from the Fund to Conservation Easement Holder, and (ii) provide Agency with written notice of such misuse or diversion so that TSDF and Agency can take appropriate action, and (iii) if Agency elects to undertake the management and maintenance responsibilities over the Property pursuant to the Agency Agreement, make distributions from the Fund to Agency or make distributions from the Fund to a distributee designated by Agency and approved the TSDF Board of Governors as described in Section 7 below.

Without limiting the foregoing, all parties hereto acknowledge and agree that distributions from the Fund are to be made only for the stewardship purposes described in Section 3 above, and that the Fund is not intended to provide distributions to address the effects of emergencies or natural disasters.

Unless the Agency Agreement provides that another person or entity shall prepare an annual fiscal report that complies with the requirements set forth in Section 65966(e) of the California Government Code, TSDF shall prepare such an annual fiscal report. Such reports are available via TSDF's website, www.sdfoundation.org.

7. CONTINUITY OF THE FUND

If any of the events referred to in Section 3(i), (ii), (iii), (iv), (v) or Section 6(iii) above occur, TSDF and Agency shall elect a new nonprofit habitat management organization approved by Agency and the TSDF Board of Governors.

The Fund shall continue so long as assets are available in the Fund and the purposes in the Fund can be served by its continuation. If the Fund is terminated for any of the above reasons, TSDF shall devote any remaining assets in the Fund exclusively for charitable purposes that:

- a. are within the scope of the charitable purposes of TSDF's Articles of Incorporation; and,
- b. most nearly approximate, in the good faith opinion of the Board of Governors, of the original purpose of the Fund.

8. NOT A SEPARATE TRUST

The Fund shall be subject to the Articles of Incorporation and Bylaws of TSDF. All money and property in the Fund shall be assets of TSDF, and not a separate trust, and shall be subject only to the control of TSDF. Pursuant to Treasury Regulations, the Board of Governors of TSDF has the power "to modify any restriction or condition on the distribution of funds for any specified charitable purpose or to any specified organization if, in the sole discretion of the Board of Governors, such restriction or condition becomes unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served." Treas. Reg. §1.170A-9(e)(1)(v)(B) and (E).

9. COSTS OF THE FUND

Founder understands and agrees that the Fund shall share a fair portion of the total administrative costs of TSDF. The administrative cost annually charged against the Fund shall be determined in accordance with the then current Fee Policy identified by TSDF as the fee structure applicable to Funds of this type. Any costs to TSDF in accepting, transferring or managing property donated to TSDF for the Fund shall also be paid from the Fund.

10. ACCOUNTING

This Fund shall be accounted for separately and apart from other deposits or conveyances to TSDF.

11. CHARITABLE DEDUCTIONS

TSDF has provided no advice or assurance to Founder as to the tax treatment of the amounts deposited in the Fund. Founder has been advised and given the opportunity to seek independent advice as to such tax treatment.

12. DISCLAIMERS

TSDF shall have no duty of any kind whatsoever to monitor or determine the Conservation Easement Holder's compliance with the HCP (including, without limitation, the Agency Agreement) other than to accept receipt, annually, of the Expense Report and the Annual Certification. TSDF shall have no liability whatsoever with respect to the performance of any of the obligations of the Conservation Easement Holder under the HCP (including, without limitation, the Agency Agreement). The responsibility for managing and maintaining the Property is limited solely to the Conservation Easement Holder. TSDF shall have no obligation whatsoever to enforce the terms and provisions of the Agency Agreement. Neither the Agency nor the Conservation Easement Holder are intended as third party beneficiaries of this Agreement.

13. ENDOWMENT DISTRIBUTION

Allocation of earnings are made semi-annually to each Fund in March and September. Earnings are available for distribution semi-annually, annually, or on request after an allocation period. Unless otherwise requested, earnings will be reinvested. Founder or Conservation Easement Holder may at any time request that earnings be distributed semi-annually, annually, or that they be reinvested, such request becoming effective on July 1 or January 1 and subject to current TSDF policies and procedures. Distributable earnings will remain distributable unless it is requested that the earnings be reinvested. Earnings reinvested become a part of principal and cannot be accessed in the future for distribution.

It is the Conservation Easement Holder's responsibility to request that TSDF end reinvestment in the fund with adequate advance notice. For annual distributions, TSDF must be notified 15 months in advance of requested distribution date. For semi-annual distributions, TSDF must be notified 9 months in advance of requested distribution date.

14. CERTIFICATION

Pursuant to California Government Code section 65968(e), TSDf certifies that it meets all of the following requirements:

- a. TSDf has the capacity to effectively manage the Fund;
- b. TSDf has the capacity to achieve reasonable rates of return on the investment of the Fund similar to those of other prudent investors for endowment funds and shall manage and invest the Fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with UPMIFA;
- c. TSDf uses generally accepted accounting practices (GAAP) as promulgated by the Financial Accounting Standards Board or any successor entity;
- d. TSDf will be able to ensure that the Fund is accounted for, and tied to, the Property; and
- e. TSDf has an investment policy that is consistent with UPMIFA.

15. DISPUTE RESOLUTION

A. Mediation. Founder and TSDf agree to mediate any dispute or claims arising between them out of this Agreement, or any resulting transaction, before resorting to court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or before commencement of an action, refuses to mediate after a request has been made, then that party shall not be entitled to recover attorneys fees, even if they are otherwise available to that party in any such action. Exclusions from this mediation agreement are specified in paragraph 15C below.

B. Governing Law and Venue. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located within California that is mutually convenient to the parties to this agreement. Each Party shall bear its own attorney's fees, costs, and expenses.

C. Exclusions. Any matter that is within the jurisdiction of any bankruptcy court shall be excluded from mediation.

[Signature Page Follows.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the date first above written.

Approved by the President & CEO of The San Diego Foundation on _____
_____.

By: _____
B. Kathlyn Mead
President & CEO

Approved as to Form
County Counsel

COUNTY OF ORANGE,
a political subdivision of the State of
California

By: _____
James D. P. Steinmann, Deputy

By: _____
Chairwoman, Board of Supervisors
Orange County, California

Signed and certified that a copy of this
document
has been delivered to the Chairman of the
Board per G.C. Sec. 25103, Reso 79-1535

ATTEST:

Robin Stieler
Clerk of the Board of Supervisors
Orange County, California

Enc.: Program Guidelines



PROGRAM GUIDELINES
Revised September 2015

1. The San Diego Foundation. The San Diego Foundation (“TSDF”) is a California nonprofit public benefit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“IRC”). TSDF is recognized as a public charity under IRC Sections 509(a)(1) and 170(b)(1)(A)(vi) and operates as a “community trust” under U.S. Treasury Regulations Section 1.170A-9T(f)(11). All contributions to and assets of TSDF are subject to its Articles of Incorporation, Bylaws and Program Policies. TSDF reserves the right to modify the terms and conditions of its Articles of Incorporation, Bylaws and Program Policies at any time.

2. Donor Advised Funds. As a community foundation, TSDF may establish for its donors a “donor advised fund,” which is separately identified by reference to the donor or donors. The fund is owned and controlled by TSDF and the donor or persons appointed by the donor have the privilege of providing advice with respect to the fund’s investments or distributions. TSDF has final authority over the distribution of all grants from its donor advised funds, and reserves the right to decline or modify a grant recommendation that is not consistent with these policies or TSDF’s charitable purposes. Gifts to a donor advised fund are irrevocable.

3. Other Funds. In addition to donor advised funds, TSDF also establishes scholarship funds (discussed below), agency funds (for the benefit of a specified charity), field of interest funds (for a specified charitable purpose) and habitat funds (to administer funds set aside to maintain ecological preserves). Gifts to these funds are irrevocable.

4. Fund Minimums. Generally, a minimum of \$50,000 is required to establish an agency fund and \$25,000 for all other funds.

5. Providing Grant Advice to Donor Advised Funds. Once a donor advised fund has been established and funded, the advisor(s) named in the agreement may recommend distributions to qualified charitable organizations. (TSDF staff will perform due diligence to verify that the organization is a current, qualified charity.) The following rules govern grant recommendations:

a. Minimums. Each recommended grant should be for at least \$250.00.

b. Procedure. Unless otherwise restricted as an endowment, grants may be recommended out of the original principal, as well as accumulated investment earnings, if any. Grant recommendations can be made at any time during the year, except for designated endowment funds, which make distributions in March and/or September. A maximum of four (4) grants may be made per year from Agency non-endowment funds. Recommendations can be submitted by mail, facsimile or electronic mail. Forms and instructions for making grant recommendations will be provided upon creation of a fund, as part of an advisor orientation process.

c. Grant Restrictions. The following restrictions apply to grants:

i. No Indirect Benefit. Grants from donor advised funds may not be used to secure any benefit from the grantee for the donor, the advisor or any persons related to them.

ii. Enforceable Pledges. Grants from donor advised funds may not be used to discharge or satisfy a charitable pledge or obligation that is legally enforceable against the donor or any other person.

iii. Event Tickets. Grants from donor advised funds may not be used to pay for goods or services of value received by the donor, advisor or their family members. For example, grants may not be used to support any charitable event, including fundraising dinners, concerts, auctions, or other benefit functions when the donor would receive a return benefit, such as the benefit of being able to attend a fundraising dinner or event. Further, no grants may be used to pay for any portion of a split or bifurcated disbursement to a charity. A split or bifurcated payment refers to the splitting of a payment to a charity, such as for tickets to an event, into two parts: the deductible portion and the non-deductible portion.

iv. Giving to Individuals. Donors may not choose a specific individual to receive a benefit from a grant from a donor advised fund.

v. Prohibited Loans & Compensation. Donors, advisors or any related parties may not receive grants, loans, compensation or similar payments (including expense reimbursements) from donor advised funds.

d. Restricted Organizations and Purposes. TSDf will not approve grant recommendations that are for non-functionally integrated Type III supporting organizations; supporting organizations that provide support to organizations controlled by the donor, advisor or related persons; supporting organizations that are controlled by the donor, advisor, or related persons; private non-operating foundations; lobbying, political campaigns or other political activities; or any purpose that is not entirely charitable.

e. Remedial Action. TSDf will take remedial action if it discovers that grants have been made for improper purposes. Remedial actions may include, but are not limited to, a requirement that the recipient charity return the grant and/or termination of the donor's advisory privileges.

f. Anti-Terrorism Provisions. As part of the grant review process, TSDf checks all recommended grant recipients against the Treasury Department's List of Specially-Designated Nationals, other U.S. and foreign government watch lists, and the IRS list of organizations whose tax exemption has been suspended under IRC Section 501(p). TSDf will not approve grant recommendations to organizations that appear on such lists.

6. Scholarship Funds. Scholarship funds may have a scholarship advisory committee. All scholarship advisory committee members must be approved by the TSDf's Board of Governors prior to making the first scholarship awards and thereafter annually. The founder may participate on the scholarship advisory committee, provided that neither the founder nor the founder's designees (related parties) may chair the scholarship advisory committee or in any way control the selection process or constitute a majority of the scholarship advisory committee members. In the event the scholarship advisory committee shall cease to be in existence, the Board of Governors of TSDf shall serve as the advisor of the scholarship fund. All scholarships shall be awarded on an objective and nondiscriminatory basis using procedures that have been approved in advance by the Board of Governors of TSDf and that have been designed to ensure that all such grants meet the requirements of paragraphs (1), (2), or (3) of Section 4945(g) of the Internal Revenue Code of 1986.

7. Income and Estate Tax Deductions. TSDf does not provide any advice or assurance to its donors as to the income tax treatment of amounts deposited in a fund. Donors are advised to seek independent advice as to such income tax treatment.

8. Investments. The fund advisors for endowment funds will have the assets invested in TSDf's Endowment pool. The fund advisors for non-endowment funds with assets in excess of \$25,000 may recommend that the assets of the fund be invested in one of three investment pools (subject to liquidity requirements); information regarding the composition of each investment pool will be provided to the donor at the time the fund is established. Such recommendations are advisory, and TSDf has final authority over the investment of assets in its funds.

9. Fees and Costs. Each fund established at TSDf shall share a fair portion of the total administrative costs of TSDf. The administrative cost annually charged against each fund shall be determined in accordance with the then current fee policy of TSDf as the fee structure applicable to funds of its type. Administrative fees for charitable expenses will be negotiated and incurred based upon the complexity of the transaction. Charitable expenses apply exclusively to Field of Interest or Special Project Funds. In addition, upon receipt of assets upon the death of a donor, a onetime estate fee will be assessed in accordance with the then current fee policy of TSDf. Any costs to TSDf in accepting, transferring or managing property donated to TSDf for a fund shall also be paid from such fund.

10. Provision for Governing Law. These Program Policies, all fund agreements, and any program-related agreement executed by a Donor shall be governed by California law. All gift agreements are deemed to be entered into in the State of California, and all contributions to the TSDf are intended to be administered and managed in the State of California.

11. Confidentiality. All information concerning donors' or prospective donors' gifts, including names of beneficiaries, gift amounts, and other personal information shall be kept confidential unless permission is obtained from the donor to release such information.

September 21, 2017 – Item 19

RESOLUTION 2017-35

RESOLUTION OF THE WATERSHED CONSERVATION AUTHORITY TO: 1) ACCEPT CONSERVATION EASEMENT WITHIN THE PUENTE HILLS TOTALING 11.56 ACRES WITHIN A PORTION OF ASSESSOR IDENTIFICATION NUMBER 8291-003-901; AND, 2) ACCEPT A MONITORING FUND ENDOWMENT MANAGED BY THE SAN DIEGO FOUNDATION.

WHEREAS, the Watershed Conservation Authority (WCA) has been established to facilitate joint projects between the Rivers and Mountains Conservancy and Los Angeles County Flood Control District; and

WHEREAS, The Watershed Conservation Authority has been established to focus on projects which will provide open space, habitat restoration, and watershed improvement projects in both the San Gabriel and Lower Los Angeles Rivers watershed; and

WHEREAS, this action accepts conservation easement within the Puente Hills totaling 11.56 acres within a portion of Assessor Identification Number 8291-003-901; and

WHEREAS, this action accepts a monitoring fund endowment managed by The San Diego Foundation; and

WHEREAS, this action is exempt from the environmental impact report requirements of the California Environmental Quality Act (CEQA).

Therefore be it resolved that the WCA hereby:

1. **FINDS** that this action is consistent with the purposes and objectives of the WCA.
2. **FINDS** that the actions contemplated by this resolution are exempt from the environmental impact report requirements of the California Environmental Quality Act.
3. **ADOPTS** the staff report dated September 21, 2017.
4. **ACCEPTS** conservation easement within the Puente Hills totaling 11.56 acres within a portion of Assessor Identification Number 8291-003-901.
5. **ACCEPTS** a monitoring fund endowment managed by The San Diego Foundation.

~ End of Resolution ~

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Motion: _____ Second: _____

Ayes: _____ Nays: _____ Abstentions: _____

Passed and Adopted by the Board of the
WATERSHED CONSERVATION AUTHORITY
On September 21, 2017

M. Janet Chin, Governing Board Chair

ATTEST: _____
David Edsall
Deputy Attorney General